STATE OF MICHIGAN

IN THE SUPREME COURT

Frank Houston, Chair, Oakland County Apportionment Commission,

and

Edna Freier, Christy Jenson, Melanie McElroy, Loretta Coleman and Jim Nash,

Plaintiffs,

v.

Rick Snyder, Governor of the State of Michigan,

and

Oakland County Board of Commissioners,

Defendants.

Michigan Supreme Court Nos. 144686 and 144691

Court of Appeals Nos. 308724 and 308725

Ingham Circuit Court No.12-10-CZ
Hon. William E. Collette

144686
144691
144728

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PLAINTIFFS' RESPONSE TO DEFENDANT GOVERNOR RICK SNYDER'S EMERGENCY APPLICATION FOR LEAVE TO APPEAL

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COUNTER -STATEMENT OF QUESTION PRESENTED

I. Is Section 1(2) of 2011 PA 280 a local act, violative of Const 1963, art 4, § 29, because it is applicable to a single jurisdiction, requiring Oakland County alone to reapportion its board of commissioners within 30 days of the effective date of the act.

Plaintiffs/Appellees answer, "Yes."

Trial Court answered, "Yes."

Court of Appeals answered, "Yes."

Defendants/Appellants answer, "No."

INTRODUCTION

This case is before the court on an emergency application for leave to appeal from a decision of the Michigan Court of Appeals. The purported emergency is this. 2011 PA 280 requires the Oakland County Board of Commissioners to reapportion the county commission districts, reducing their number from 25 to 21, within 30 days of March 28, 2012, the effective date of the act. The Ingham Circuit Court enjoined implementation of the act based, *inter alia,* on its conclusion that the act is applicable only to Oakland County, and is, thus, a local act which violates Const 1963, art 4, § 29. The Court of Appeals affirmed this conclusion. Defendants ask this court to act on an expedited basis to reverse the Court of Appeals and allow this act to be implemented. Defendants describe 2011 PA 280 as an act to reduce the size of county government. They do not and cannot deny that the only county government which is reduced by this act is Oakland County. Indeed, the act was passed at the request of the Oakland County Executive, perhaps with the concurrence of some county commissioners, for the stated purpose of allowing the county to reduce the size of its board of commissioners. The act places a cap of 21 on the number of county commissioners and requires reapportionment of all counties "not in compliance" with that cap, that is, having more than 21 commissioners, on one day, March 28, 2012, the effective date of the act. Oakland County is the only county which has more than 21 commissioners and the only county which will be required by the act to reapportion. [1]

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[1]A seemingly unrelated provision in the act requires that this apportionment be done by the board of commissioners rather than by the statutory apportionment commission which performs that task in all counties and which apportioned Oakland County in 2011. In fact, this would appear to be the real purpose of the act. Were it otherwise, the

Despite the fact that Defendants are arguing that the case must be immediately decided so that they can proceed with this unprecedented redo of Oakland County's apportionment plan, they argue that the requirement for this second apportionment, mandated by Section 1(2) of PA 280, is not a substantive part of the act, that it is a "mere compliance provision." Unable to demonstrate that Section 1(2) makes PA 280 anything other than a local act applicable to a single jurisdiction, Oakland County, on a single day, March 28, 2012, they focus on irrelevant arguments regarding the possibility that decades from now Section 2 of the act may conceivably prevent a county from increasing the number of its commissioners to more than 21 or that Section 3 may conceivably allow a county other than Oakland to have its decennial apportionment done by the county board of commissioners.

It cannot be gainsaid that the essential purpose of this act is to allow Oakland County to engage in a second apportionment and to have it done by its board of commissioners. All of the facts support the conclusion, widely recognized from the outset, that the legislature and governor were persuaded to disregard their constitutional responsibilities and pass this appalling law as a political favor to Oakland County Executive L. Brooks Patterson.[2] The time for political favors ended when the matter moved from the

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legislature would have been asked to reduce the number of commissioners before rather than after the regular decennial apportionment took place.

[2] Editorial comments regarding House Bill 5187, later 2011 PA 280, included the following: "Brazen . . . clumsy and oafish . . . an attempt to change the rules after the game has been played . . . a sore-loser measure" (Oakland Press editorial, 12/9/11); "Selfish and disturbing" (Spinal Column editorial, 12/14/11) "The silliest of the three turkeys awaiting Snyder's signature . . . a bit of legislative juvenile delinquency that would effect a state-sponsored Republican coup in Oakland county. . . a power grab without precedent . . . [a] clumsy attempt to bigfoot Oakland voters. . . " (Detroit Free Press editorial,

governor's desk to the courts. The Trial Court and the Court of Appeals were persuaded by the law, not by the politics. Plaintiffs are confident that the same will be said of the Michigan Supreme Court.

STATEMENT OF FACTS

The facts are relatively simple and undisputed. Following the publication of the 2010 decennial census, the apportionment of county commission districts proceeded in all eighty-three Michigan counties, including Oakland County, pursuant to the county apportionment act, 1966 PA 261, MCL 46.401, et seq. In each of these eighty-three counties, including Oakland County, the five person county apportionment commission consisted of three elected county officials, the clerk, the treasurer and the prosecutor, and the county chairs of the two major parties.

In Oakland County, following the completion of the apportionment plan and its filing with the county clerk, a petition for review was filed in the Court of Appeals. After briefing and oral argument the Court of Appeals rejected the arguments of the petitioners and, in an unpublished decision issued on November 15, 2011, Court of Appeals Docket No. 304696, affirmed the apportionment plan, which became the official plan for the next decade when the petitioners failed to timely appeal the Court of Appeals decision.

Two weeks later, on November 29, 2011, House Bill 5187 was introduced to amend the county apportionment act. The bill was given an unusually speedy passage through the house and the senate, as shown by the legislative journal attached as Exhibit 1. It was

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12/18/11); . . . a hubris-laden and blatantly political boondoggle . . . [a] bellicose power grab . . . this folly of a bill. . . (Spinal Column editorial, 12/21/11) . . . an unconscionably naked power grab .. . a disturbing disregard for the democratic process . . . this stinker of a law (Livingston Daily editorial, 12/30/11)

passed in the house by a vote of 58 to 50 on December 8, in the senate by a vote of 20 to 17 on December 14, signed by the governor on December 19, and given the number 2011 PA 280.

2011 PA 280 makes three changes to the county apportionment act: Section 2 of the act sets a limit of 21 on the number of commissioners for all counties with a population greater than 50,000. Section 1(2) of the act requires any county which is not in compliance with Section 2 on the effective date of the act, March 28, 2012,[3] to apportion the county within 30 days so as to comply with Section 2. Section 3(1) of the act provides that for counties with a population in excess of 1,000,000, which have adopted the optional unified form of county government, and which have an elected county executive, the apportionment commission will be the county board of commissioners.

In determining where and how the act will be implemented there are two indisputable facts: (1) Oakland County is the only county which currently has more than 21 commissioners, and (2) Oakland County is the only county which currently has a population in excess of 1,000,000 which has adopted the optional unified form of county government with an elected county executive.

Thus, the additional facts which necessarily follow from these two are: Oakland County is the only county which is mandated by 2011 PA 280 to reapportion its commission districts in the 30 days following the effective date of the act and the only county which will be apportioned by the county board of commissioners.

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[3] Unless given immediate effect, which this act was not, an act becomes effective 90 days after the adjournment of the legislature. There is some confusion as to whether the effective date is March 27 or March 28, 2012. This is not material.

The timing of the introduction of House Bill 5187, two weeks after the Court of Appeals decision, suggested that the two events were related, although the relationship is complicated. On January 25, 2012, Oakland County Executive L. Brooks Patterson issued a press release, titled "Patterson releases HB 5187 letters." It announced the release of his letters to Governor Snyder and to Oakland County's lobbyist "regarding the bill to reduce the size of the Oakland County Board of Commissioners."[4] Copies of the press release and the letters released in connection with it are appended as Exhibit 2. The letter to Governor Snyder was dated October 4, 2011, and states,

> "... Oakland County will soon be proposing new legislation that would allow Oakland County to reduce the size of its government by limiting the number of elected commissioner positions. Specifically, Oakland County will be asking the legislature to limit counties operating under a voter-adopted Optional Unified Form of County Government, Act 139, P.A. 1973, and having a population of one million or more to elect not more than 21 county commissioners."

The letter to Oakland County's lobbyist was dated August 2, 2011, and discussed talking points in favor of a plan for a second apportionment, although the details of the plan are not set out, most of the letter detailing complaints about the plan drafted by the statutory apportionment commission.

The timing of these letters indicates that Oakland County was planning for many months to seek from the legislature the ability to do a second apportionment, and to do it with the board of commissioners as the apportionment commission. The statute was written for precisely that purpose. In this regard it is telling to read the Senate Fiscal

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[4] A Freedom of Information Request had been submitted and it would appear that Mr. Patterson thought it would be preferable for him to release the documents rather than have it done by others.

Agency analysis of House Bill 5187, which, under the heading "content," says:

> The bill would . . . do the following:
>
> . . .
>
> –Designate the county board of commissioners as the county apportionment commission *in Oakland County*. (Emphasis added.)

In its further analysis of the bill, in the section titled "County Apportionment Commission," the analysis says:

> Under the bill, a county with a population of at least 1.0 million that has adopted an optional unified form of county government under Public Act 139 of 1973, with an elected county executive (*i.e., Oakland County*), the county apportionment commission would be the county board of commissioners. A majority of the apportionment commission would constitute a quorum. (Emphasis added.)

The analysis is appended as Exhibit 3.

SUMMARY OF PROCEEDINGS BELOW

Plaintiffs filed their complaint on January 4, 2012, alleging that 2011 PA 280 violated Const 1963, art 1, § 2, art 4, § 29, and art 9, § 29, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Judge William E. Collette of the Ingham County Circuit Court heard oral arguments on cross motions for summary disposition on February 8, 2012. He issued an opinion on February 15, 2012, granting Plaintiffs' motion for summary disposition and denying Defendants' motions for summary disposition. An order was entered on February 21, 2012. On February 22 and 23, 2012, Defendants filed emergency claims of appeal with the Court of Appeals, along with motions to expedite the appeals. On February 23, 2012, they filed bypass applications for leave to appeal with the Michigan Supreme Court. On February 24, 2012, the Court of Appeals granted the motions to expedite and directed that Plaintiffs' brief be filed by February 28,

2012. The Court of Appeals issued a decision in the matter on March 7, 2012, affirming in part the decision of the Trial Court. The Court of Appeals majority held that Section 1(2) of 2011 PA 280 is applicable only to Oakland County, that it requires only Oakland County to reapportion its county commission districts, and that it is, thus, an unconstitutional local act, violative of Const 1963, art 4, § 29. The majority also concluded that other provisions of the act were capable of future application to other jurisdictions, were severable, and, were, thus, constitutional. Because of this conclusion, the court found it unnecessary to address the additional bases on which the trial court had found 2011 PA 280 unconstitutional. The dissenting judge concluded that the act was not a local act. He then addressed and rejected the art 9, § 29 claim, but did not address the claim that the act denied the citizens of Oakland County equal protection because it denied their right to petition for review of an apportionment plan.

Defendant Snyder filed an emergency application for leave to appeal the Court of Appeals decision and a motion for immediate consideration of the emergency application. Defendant Oakland County filed a request to have its bypass application treated as an application for leave to appeal.

ARGUMENT

I. DEFENDANT SNYDER HAS NOT ALLEGED AND CANNOT ESTABLISH THAT THERE ARE MERITORIOUS GROUNDS FOR GRANTING LEAVE TO APPEAL.

MCR 7.302(B) provides that an application for leave *must show* one or more of the grounds set forth. Defendant Snyder's application makes no reference to this requirement. It is, of course, obvious that the case involves the validity of a legislative act, but the issue – whether 2011 PA 280 is a prohibited local act – has been correctly addressed by the

Court of Appeals decision. It is also true that the case is one which has garnered significant public attention. Again, the issue raised has been addressed in the decision of the Court of Appeals. That decision is not clearly erroneous, but is rather fully consistent with this Court's precedent. The issue does not involve legal principles of major significance to the court's jurisprudence. As is evident from the case law discussed, cases involving art 4, § 29, the local act prohibition, arise very infrequently, and the principles articulated seventy five years ago in ***Dearborn v Wayne County Bd of Supervisors***, 275 Mich 151; 266 NW 304 (1936), are unchanged. There is no reason for this Court to grant the application for leave to appeal.

II. THE APPLICABLE STANDARD OF REVIEW.

The standard of review for issues regarding the constitutionality of laws is de novo. ***Blank v Dep't of Corrections***, 462 Mich 103, 112; 611 NW2d 530 (2000). The standard of review for findings of fact is clearly erroneous. ***Sands Appliance Servs v Wilson***, 463 Mich 231, 238; 615 NW2d 241 (2000). The constitutionality of 2011 PA 280 is at issue here. That issue, however, depends upon whether the statute is applicable to more than one jurisdiction and that determination is a question of fact, or a mixed question of fact and law.

III. THE COURT OF APPEALS CORRECTLY HELD THAT 2011 PA 280 IS A LOCAL ACT WHICH VIOLATES CONST 1963, ART 4, § 29.

A. To avoid the local act prohibition, the classifications established in an act must be open ended and reasonably related to the purpose of the act.

Const 1963, art 4, § 29, titled "Local or special acts," provides as follows:

"The legislature shall pass no local or special act in any case where a

> general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.

Art 5, § 30 of the 1908 constitution contained the same prohibition. As the Trial Court recognized, the case of ***Dearborn v Wayne County Bd of Supervisors***, 275 Mich 151; 266 NW 304 (1936), sets forth the two requirements to prevent a statute from running afoul of the local act prohibition. This two part test says that where there is a classification distinguishing among municipalities[5] the classification must be open ended, so that the law will apply to any municipality which achieves that population or satisfies those other classifying criteria. In addition, the classification must be reasonably related to the purpose of the statute. In assessing whether there is such a reasonable relationship, the court in ***Dearborn*** also observed that the law could not be couched in general terms as a subterfuge to evade the local act prohibition.

B. 2011 PA 280 is not open ended.

The Court of Appeals was correct in concluding that 2011 PA 280 is not open ended but rather can apply to only one jurisdiction. The most recent case to interpret the local act prohibition was ***Michigan v Wayne County Clerk,*** 466 Mich 640, 648 NW2d 202 (2002), a unanimous per curiam decision which the Court of Appeals correctly recognized as dispositive. The statute considered by this Court in that case provided that any city with

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[5] The classification used most often is population but it could be other criteria. Section 3 of PA 280 uses three classification criteria, population and two aspects of governmental structure, and Section 1(2) of PA 280 classifies counties based on the number of commissioners they have.

a population of at least 750,000, as determined by the most recent federal decennial census, and a nine-member council with members elected at-large, had to place on the August 6, 2002, ballot the question of whether the council members should be elected by district. The statute was clearly aimed at the City of Detroit as it was the only city with the population and city council structure defined in the statute. This Court observed that a statute is an impermissible local act "where the statute cannot apply to other units of government." It was argued in ***Wayne County Clerk*** that the statute *could* apply to other units of government because it was possible that at some future time some city other than Detroit *could* exceed 750,000 in population and *could* have a nine-member city council elected at-large. This Court rejected that argument because of the statutory mandate for an August 6, 2002, election, observing that while other cities could perhaps someday reach the 750,000 population level, and could have a nine-member at-large city council, no city could do so prior to August 6, 2002, as there would not be another decennial census prior to that date.

2011 PA 280 requires all counties "not in compliance," i.e., having more than 21 commissioners, on a single date, March 28, 2012, to reapportion within 30 days of that date. It is undisputed that as of the enactment of 2011 PA 280, only Oakland County had more than 21 commissioners, so only Oakland County was "not in compliance." The cases have held that it is not the *probability* but the *possibility* that another jurisdiction could at some time be affected which determines whether an act is local or general. The Defendants argued, and Judge Meter agreed in his dissent, that it was possible, albeit exceedingly improbable, that between the enactment date and the effective date of the act, Wayne County could have amended its charter so as to increase the number of

commissioners to more than 21. The Defendants argued, and Judge Meter agreed, that had this happened Wayne County would also then have been a county which was "not in compliance" on the effective date of the act and it would have been required, like Oakland County, to reapportion. From this Judge Meter concluded that the statute is a general rather than a local act. The majority opinion rejected this argument and held that it was *practically* impossible that another county could have had more than 21 commissioners on the effective date of the act and, thus, been required to reapportion.

Defendant Governor Snyder contends that the Court of Appeals majority improperly applied a probability as opposed to a possibility standard but, in fact, it was not just *practically* impossible but *factually and legally* impossible for Wayne County to be subject to the reapportionment requirement of Section 1(2). Wayne County is a charter county. The number of commissioners in a charter county is not controlled by MCL 45.402, the county apportionment act, but is rather controlled by the charter county act, MCL 45.501, et seq. MCL 45.514 provides that the charter of a charter county must establish the number of county commissioners and that for a county with a population greater than 600,000[6] this number must be not less than 5 nor more than 27. Thus, neither the original Section 2 nor the amended Section 2, with the 21 commissioner cap imposed by 2011 PA 280, could apply to Wayne County.[7]

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[6] As of the last census Wayne County had a population of 1,520,824.

[7] Note that Macomb County, which is also a charter county, has 13 commissioners and Wayne County has 15. If Section 2 had applied to charter counties, Macomb County would have been required to have between 17 and 35 commissioners, while Wayne County would have been required to have between 25 and 35 commissioners.

Even if, during the period between the enactment and effective dates of PA 280, Wayne County had been able to increase the number of its commissioners to more than 21, through charter amendment proposed, placed on the ballot, approved by the voters at the February election, and made effective before March 28, 2012 (the hypothetical suggested by Defendants and accepted by Judge Meter), it would not have been required to reduce that number by reapportionment. It would not have been "out of compliance" with amended Section 2, so amended Section 1(2) would not have applied to it. In sum, as a matter of both fact and law, Oakland County was the only county which was, or even hypothetically could have been, "not in compliance" on the effective date of the act. The conclusion of the Court of Appeals that Oakland County was the only county affected was not clearly erroneous.[8] To the contrary, it was clearly correct. The majority's conclusion which followed from that -- that Section 1(2) of 2011 PA 280 was a local act -- was correct.

C. The classifications in 2011 PA 280 are not reasonably related to the purpose of the act, unless it is acknowledged that the real purpose of the act was not to reduce the size of county government but rather to have Oakland County apportioned by the board of commissioners with its Republican majority.

The second requirement from the 1936 ***Dearborn*** case is that any classification distinguishing among municipalities be reasonably related to the purpose of the act and not a subterfuge. Neither the Trial Court nor the Court of Appeals found it necessary, and indeed it was not, to address this part of the test for a local act because 2011 PA 280 so clearly failed the first test – that the act be open ended. However, it is also readily apparent that the classifications in the act are not reasonably related to the stated purpose

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[8] Judge Meter's conclusion that Wayne County could have been affected by PA 3280 was, by contrast, clearly erroneous.

of the act, that being to reduce the size of county government. Section 3 of PA 280 requires that in a county with a population in excess of 1,000,000, organized pursuant to the optional unified form of county government, with an elected county executive, the apportionment commission be the county board of commissioners. There is no reasonable explanation for this provision. It can only be said to be reasonably related to the purpose of the act if it is recognized that the real purpose of the act was to mandate the creation of a second apportionment plan for Oakland County, to be done by the board of commissioners with its Republican majority, to replace the apportionment plan created by the statutory apportionment commission with its Democratic majority. House Bill 5187 was proposed at the request of the Oakland County Executive, to apply to Oakland County, and was passed by the legislature for Oakland County. The assertion that this was done for the purpose of "reducing the size of county government" was nothing but a fig leaf, which failed utterly to cover the real purpose of the act. If this were the county's real concern it could and would have proposed legislation reducing the size of county commissions at any time prior to the 2011 apportionment so that the statutory apportionment commission could draw a map for 21 rather than 25 districts. The purpose of 2011 PA 280 was not to reduce the size of the Oakland county commission but to give the Republican majority on the Oakland County Board of Commissioners the opportunity to redraft the county's apportionment plan. It is readily apparent from Mr. Patterson's letters that he was promoting this plan even before the Court of Appeals considered and approved the apportionment plan. Obviously, he knew that even if the plaintiffs were to prevail in their legal challenge to the apportionment plan the remedy would be to have the statutory apportionment commission draft a new plan. It was simply not acceptable to Mr. Patterson

to have an apportionment plan drafted by an apportionment commission with a Democratic majority. He wanted, and got, a different law for Oakland County, and for Oakland County alone.

The Defendants argue that motive is irrelevant. While this might be true as a general proposition, it is not true where the case law regarding local acts recognizes that a statutory classification which is a subterfuge is invalid. There could be no clearer demonstration of subterfuge than in the instant case. While the Court of Appeals majority did not find it necessary to address at length the issue of subterfuge, it did observe in footnote 1 that, "This Court will not uphold an act as a general act where it is plain that the requirements are a "manifest subterfuge designed to limit its application to only one locality." Slip Op. at 5, n1.

Finally, the Court of Appeals majority correctly observed the important policy served by the constitutional prohibition on local acts, as follows:

> The people adopted this limitation in order to prevent the Legislature's "'pernicious practice'" in passing local acts, which amounted to "' a direct and unwarranted interference in purely local affairs and an invasion of the principles of local self-government.'" ***Advisory Opinion on Constitutionality of 1975 PA 301***, 400 Mich 270, 286-287; 254 NW2d 528 (1977), quoting ***Attorney General ex rel Dingeman v Lacy***, 180 Mich 329, 337-338; 146 NW 871 (1914). This practice led to abuse because the "'representatives from unaffected districts were usually complaisant, and agreed to its enactment without the exercise of that intelligence and judgment which all legislation is entitled to receive . . . .'" ***Id.***

It certainly appears that in disregarding the prohibition on local acts the legislature did precisely what the prohibition was designed to prevent. It passed, without hearings, in a mere two weeks, this outrageous act.

IV. THE COURT OF APPEALS CORRECTLY HELD THAT *MICHIGAN V WAYNE COUNTY CLERK*, IS DISPOSITIVE.

The Court of Appeals majority was correct in recognizing that ***Michigan v Wayne County Clerk, supra,*** is dispositive. The statute there, as discussed above, was concluded to be a local act because of the specific time requirement included in the act. In that case, the act in question required that all cities with a specified population and city council structure have an election on August 2, 2002, to determine whether to change the method of electing council representatives. The act was local – not open ended – because no other jurisdiction could satisfy the statutory criteria by that specific date. The requirement of reapportionment in 2011 PA 280 is similarly time limited, as the Court of Appeals majority concluded: "[B]ecause it applies only to counties that are not in compliance with the act *on the very day* that the act becomes effective, Public Act 280's 30-day apportionment requirement will plainly apply to only one county: Oakland County." Slip Op. at 5. (Emphasis in the original)

Judge Meter, writing in dissent, attempted unsuccessfully to distinguish ***Wayne County Clerk***, saying that the temporal limitation in the act challenged in that case meant that only Detroit was subject to the requirements of the statute while all counties, he said, are subject to the requirements of PA 280. While it is true that all counties are prohibited by Section 2 of PA 280 from having more than 21 commissioners[9] only Oakland County will have more than 21 commissioners on the effective date of the act and only Oakland County is, thus, required by Section 1(2) of the act to reapportion so as to reduce the

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[9] Except , as discussed, charter counties with a population in excess of 600,000, which can have up to 27.

number to 21. Reapportionment is the essential feature of PA 280 and only Oakland County is required to reapportion.

Judge Meter, writing in dissent, accepted the argument of Defendants that ***Chamski v Cowan***, 288 Mich 238; 284 NW 711 (1939), is "somewhat analogous." It is not. The statute in that case had detailed provisions for the appointment of probate judges, depending on county populations. While counties with specified populations were required to act by a specific date, other counties were also required to act at subsequently specified dates when they reached those population levels. In other words, the statute was explicitly open ended. That is in complete contrast to the instant case. As the Court of Appeals majority stated, the statute in question is applicable to counties which have more than 21 commissioners on one day, on March 28, 2012. 2011 PA 280 requires counties meeting that very specific requirement to reapportion. Only one county meets that requirement.

V. THE COURT OF APPEALS DETERMINATION TO SEVER SECTION 1(2) FROM THE REST OF 2011 PA 280 WAS CORRECT.

The Court of Appeals correctly concluded that, while Section 1(2) of 2011 PA 280 was a prohibited local act, applying as it did to only one jurisdiction, the other provisions in the act could possibly have some applicability to other jurisdictions in decades hence. The Court, therefore, properly decided to sever the unconstitutional provision. Defendant Snyder objects, contending that the statute should be read as a whole, putting Section 1(2) in context. Contrary to Defendant's argument, there is no context in which Section 1(2) can be read as open ended. Calling it "merely an immediate compliance provision" is nonsense. It is precisely the requirement of immediate compliance which makes it closed

rather than open ended. Defendant Snyder argues that "[T]he provision of which Plaintiffs complain (Section 1(2)) merely promotes action on the part of *any* county meeting the statutory requirements." (Br at 16) It is true that it promotes action, namely reapportionment within 30 days of March 28, 2012, on the part of any county meeting the statutory requirements. However, it is also true that the statutory requirement to which Defendant refers is having more than 21 commissioners on March 28, 2012, and Oakland County is the only county which meets the statutory requirement. That is the case in a nutshell. Try as Defendants might, they cannot make a silk purse out of this sow's ear. 2011 PA 280 is a local act and there is no way it can be made general.

CONCLUSION AND RELIEF SOUGHT

In conclusion, Defendant has not established that its application for leave to appeal should be granted and Plaintiffs respectfully request that it be denied. If leave is granted and the Court chooses to decide the matter on the applications, given the time constraints in the case, Plaintiffs respectfully request that the decision of the Court of Appeals be affirmed. Plaintiffs further note that, given its decision on the art 4, § 29 issue, the Court of Appeals found it unnecessary to address the alternate bases upon which the Trial Court had concluded that 2011 PA 280 was unconstitutional. If this Court were to conclude that the Court of Appeals erred in its conclusion regarding the local act issue, it would need to address those alternate bases, which have been briefed in the Plaintiffs' response to the

Defendants' bypass applications, and which we would ask the Court to consider.

Respectfully submitted,

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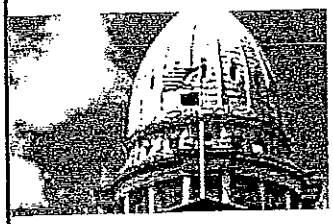
Dated: March 13, 2012



MICHIGAN LEGISLATURE

96th Legislature Regular Session
Michigan Compiled Laws Complete Through PA
Compiled through Act 224 & includes 226-232 & 234-241 of 2011
House: Adjourned until Wednesday, December 28, 2011 11:30:00 AM
Senate: Adjourned until Wednesday, December 28, 2011 11:30:00 AM

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Categories Counties, boards and commissions

Counties; boards and commissions; membership on the county apportionment commission; modify under certain circumstances and modify number of county commissioners based on population. Amends secs. 1, 2 & 3 of 1966 PA 261 (MCL 46.401 et seq.).

Bill Document Formatting Information

(gray icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the House
As Passed by the House is the bill, as introduced, that includes any adopted House amendments.

As Passed by the Senate
As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

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Concurred bill is the version passed in identical form by both houses of the Legislature, issued prior to availability of the Enrolled bill.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Senate Fiscal Analysis

FLOOR SUMMARY (Date Completed: 12-14-11)
This document analyzes: HB5187

Laws

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2011 HB 5187

History (House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
11/29/2011	HJ 94 Pg. 2661	introduced by Representative Bradford Jacobsen
11/29/2011	HJ 94 Pg. 2661	read a first time
11/29/2011	HJ 94 Pg. 2661	referred to Committee on Government Operations
11/30/2011	HJ 95 Pg. 2691	printed bill filed 11/30/2011
12/7/2011	HJ 98 Pg. 2751	reported with recommendation with substitute H-3
12/7/2011	HJ 98 Pg. 2751	referred to second reading
12/7/2011	HJ 98 Pg. 2772	read a second time
12/7/2011	HJ 98 Pg. 2772	substitute H-3 adopted
12/7/2011	HJ 98 Pg. 2772	placed on third reading
12/8/2011	HJ 99 Pg. 2812	read a third time
12/8/2011	HJ 99 Pg. 2812	passed Roll Call # 564 Yeas 58 Nays 50
12/8/2011	HJ 99 Pg. 2812	transmitted
12/13/2011	SJ 98 Pg. 2783	RULES SUSPENDED
12/13/2011	SJ 98 Pg. 2783	REFERRED TO COMMITTEE OF THE WHOLE
12/14/2011	SJ 99 Pg. 2831	REPORTED BY COMMITTEE OF THE WHOLE FAVORABLY WITHOUT AMENDMENT(S)
12/14/2011	SJ 99 Pg. 2831	PLACED ON ORDER OF THIRD READING
12/14/2011	SJ 99 Pg. 2831	RULES SUSPENDED
12/14/2011	SJ 99 Pg. 2831	PLACED ON IMMEDIATE PASSAGE
12/14/2011	SJ 99 Pg. 2833	PASSED; GIVEN IMMEDIATE EFFECT ROLL CALL # 803 YEAS 20 NAYS 17 EXCUSED 1 NOT VOTING 0
12/14/2011	HJ 101 Pg. 2916	returned from Senate without amendment with immediate effect
12/14/2011	HJ 101 Pg. 2916	bill ordered enrolled
12/28/2011	Expected in HJ 103	presented to the Governor 12/16/2011 @ 2:46 PM
12/28/2011	Expected in HJ 103	approved by the Governor 12/19/2011 @ 3:42 PM
12/28/2011	Expected in HJ 103	filed with Secretary of State 12/20/2011 @ 4:56 PM
12/28/2011	Expected in HJ 103	assigned PA 280'11

the information is inaccurate, out-of-date, or incomplete or if you have problems accessing or reading the information, please send your concerns to the appropriate agency using the online Comment Form in the bar above this text.

Press Release

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Patterson Releases HB 5187 Letters

Letter to Governor Rick Snyder (file size 705k)

Letter to Jon E. Smalley (file size 1M)

Public Date: 01/25/2012
Contact: Bill Mullan, Media and Communications Officer
Phone Number: 248-858-1048

Pontiac, Michigan -- Oakland County Executive L. Brooks Patterson has released his letters to Governor Rick Snyder and Oakland County's lobbyist, Jon E. Smalley of Muchmore Harrington Smalley & Associates, Inc. in Lansing, regarding the bill to reduce the size of the Oakland County Board of Commissioners.

Both letters make it clear that Oakland County, in order to serve the best interests of taxpayers, sought to reduce the size and cost of county government through HB 5187. Because redrawing county commission districts would be a natural consequence of the legislation, the letters state that Oakland County wanted to align the way it reapportions with the current State of Michigan legislative model: to have elected representatives who are directly accountable to the residents of Oakland County determine the new district boundaries, not Democrat and Republican party chairs.

In his letter to the Governor dated October 4, 2011, Patterson said, "With the support of a majority of the members of the Oakland County Board of Commissioners, Oakland County will soon be proposing new legislation that would allow Oakland County to reduce the size of its government by limiting the number of elected commissioner positions.

"Given the shrinking revenue base, Michigan governments, including Oakland County, must reduce their footprint. ...Oakland taxpayers will save nearly one-quarter million dollars annually if legislation is adopted that allows us to reduce the number of elected commissioners by at least 4, from 25 to 21."

In addition, in his letter to Smalley dated August 2, 2011, Patterson said, "The change in the current law on redistricting at the county level to allow the elected commissioners to redraw the district boundaries would simply align our procedure with the existing state legislative model. It works well at the state level; way too political at the county level. We are asking for a process that insures fairness for all commissioners and the citizens they represent."

The public may view the letters at Oakland County's "News and Events" webpage, www.oakgov.com/about/news/ by the close of business today.

For media inquiries only, please contact Bill Mullan, Media and Communications Officer, at (248) 858-1048.

OAKLAND®
COUNTY MICHIGAN

L. BROOKS PATTERSON, OAKLAND COUNTY EXECUTIVE

October 4, 2011

The Honorable Rick Snyder
Governor of the State of Michigan
P.O. Box 30013
Lansing, MI 48909

Dear Governor Snyder:

With the support of a majority of the members of the Oakland County Board of Commissioners, Oakland County will soon be proposing new legislation that would allow Oakland County to reduce the size of its government by limiting the number of elected commissioner positions. Specifically, Oakland County will be asking the legislature to limit counties operating under a voter-adopted Optional Unified Form of County Government, Act 139, P.A. 1973, and having a population of one million or more to elect not more than 21 county commissioners.

Given the shrinking revenue base, Michigan governments, including Oakland County, must reduce their footprint. MLC 46.402 currently mandates that a county having a population of over one million elect at least 25, but not more than 35, commissioners. Oakland County believes this requirement needs changing.

Oakland taxpayers will save nearly one-quarter million dollars annually if legislation is adopted that allows us to reduce the number of commissioners elected to the county board by at least 4, from 25 to 21. Reducing the number of elected commissioners will also allow for a reduction in support staff. Taken together, these actions will result in substantial savings.

Any action taken to reduce the number of elected commissioners will require a change in the current law on county redistricting since we will require fewer election districts. Our proposal will follow the state model and have only elected officials redraw the district boundaries. The current law employs unelected, purely partisan political party operatives in the redistricting process. These individuals are not accountable to voters yet often play what is an outcome determining role in the establishment of election districts. We believe that having only elected commissioners involved in creating a redistricting plan improves the process as it is more transparent and gives voters a better means to hold redistricting officials accountable for their actions. The existing state legislative model works well at the state level and can be used fairly to replace the current county procedure, a procedure that is too political.

I also note that this elected-official model has its basis in Michigan history. Before 1966 there were no county commissioner districts. Oakland County, as well as the other counties across the state, was represented by a "Board of Supervisors." The Board of Supervisors included all elected township

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supervisors with additional city representation as provided by law. However, that mechanism proved to be too unwieldy as there were so many of these officials. The law was changed in 1966 and an "Apportionment Commission" was established. The five-member apportionment commission is made up of the unelected county chairmen of the two major political parties and the incumbent prosecutor, clerk, and treasurer.

We are asking for a better process, one that insures fairness for all commissioners and the citizens they represent. Therefore, we strongly advocate that Act 139 unified counties having a population of over one million (to date only Oakland County) be given the option of utilizing an apportionment and redistricting procedure that is similar to what the state utilizes. We seek to have only our elected representatives, those most closely accountable to the voters, draw the commissioner district boundary lines. We are asking for a process that insures fairness for all commissioners and the citizens they represent.

Governor Snyder, I hope this information is sufficient to garner your support. If not, please let me know and I will provide any additional information you may need to satisfy any inquiry you might have.

Cordially,

L. Brooks Patterson
County Executive

Enclosures

OAKLAND®
COUNTY MICHIGAN

L. BROOKS PATTERSON, OAKLAND COUNTY EXECUTIVE

August 2, 2011

Mr. Jon E. Smalley
Muchmore Harrington Smalley & Associates, Inc.
124 West Allegan Street, Suite 1900
Lansing, MI 48933

Dear Jon,

Jon, in response to your bullet points please accept the following responses:

1. There will be savings for the taxpayers of nearly one-quarter million dollars achieved by reducing the number of commissioners on the Oakland County Board from 25 to 21 (also a reduction in support staff). Governments, including Oakland County, must reduce their footprint as they are a shrinking revenue base. This is a substantial savings.

2. The change in the current law on redistricting at the county level to allow the elected commissioners to redraw the district boundaries would simply align our procedure with the existing state legislative model. It works well at the state level; way too political at the county level. We are asking for a process that insures fairness for all commissioners and the citizens they represent.

3. The proposed district maps, drafted by the existing five-member "Apportionment Commission," are enclosed. It is clear that egregious gerrymandering occurred, so outrageous that it has prompted a lawsuit by aggrieved plaintiffs.

   By way of background, during the deliberations of the Apportionment Commission, several plans were advanced. In an effort to narrow consideration of the plans the Chairman of the Democratic Party, Frank Houston, requested members of the Commission to take a straw vote on the plans. The majority of the Commission indicated a willingness to support the Cooper Amendment Plan 1 (Prosecutor Jessica Cooper). However, in deference to Ms. Cooper's request for additional time, a formal vote was not taken.

   Ms. Cooper has stated over and over again at the meetings that the most important consideration for her, and in her understanding of the statute, was to have the lowest possible deviation between the highest and lowest population districts. Other considerations, such as municipal breaks, split precincts, and communities of interest were of a lower priority in her legal opinion. Therefore a change from a 4.7% deviation factor in the Cooper Amendment Plan 1 to 7.9% deviation in the Cooper Amendment Plan 2 is obviously contrary to her stated

opinion and begs the question, what changed her mind? Further, a strong argument can be made that "communities of interest" were unnecessarily divided. The City of Pontiac, with many challenges of being a low income urban community, has been split three ways diluting their vote and combining it with wealthier suburbs in Waterford Township, Keego Harbor, Sylvan Lake, and the City of Orchard Lake. Wealthy Southfield Township was combined with Lathrup Village and the City of Southfield, the latter having its own urban challenges.

From a municipal break standpoint the approved Cooper Amendment Plan 2 increases the number of splits by two from the current map drafted and passed in 2000.

While districts are contiguous, there are areas where the connections are fairly thin. Commission District 16 comes to a thin point on the southern boundary, Commission District 11 cuts like a snake through the middle of Waterford Township.

It should be noted that the first plan submitted by Democratic Prosecutor Cooper had: 1) the lowest deviation of population and certainly the protection of one man one vote was insured; 2) drew no incumbent county commissioners into the same district; 3) respected commonly accepted communities of interest.

After pressure from Democratic Party members, Prosecutor Cooper dramatically changed her plan (the so-called "Cooper Amendment Plan 2") requiring a change in the agreed upon time line by all parties. This second plan (the one that now stands approved by the Democratically controlled Apportionment Commission) violated the statutes and opinions that govern the conduct of the Commission and sought only partisan political advantage.

In support of that last statement consider: 1) the City of Pontiac was split into three districts to boost the Democratic base in surrounding districts; 2) previously compact districts were elongated and made into serpentine shaped districts, sometimes only contiguous at one precinct; 3) the population deviation nearly doubled from the Prosecutor's first plan to the second plan; 4) two county commissioners were drawn into the same district; 5) suburban communities were connected to urban areas and tipped the voting balance in those districts; 6) the plan was adopted on the last day allowable on this statute on a party line vote.

4. Now, as to the historical basis of how apportionment occurred before the change in procedure mandated by state statute in 1966: Before 1966 there were no commissioner districts. The county of Oakland, as well as other counties across the state, was represented by a "Board of Supervisors." (The Board of Supervisors was made up of all elected officials in the county and proved to be an unwieldy commission.) The law was changed in 1966 for the first time establishing an "Apportionment Commission" made up of the chairmen of both political parties and the incumbent prosecutor, clerk, and treasurer.

We strongly advocate that Oakland County, for that matter counties across the state, be given the option of utilizing the Apportionment Commission and/or modeling a procedure similar to what the state utilizes and have our elected representatives of the public redraw the boundary lines.

Jon, this information is in response to your four-point email. I hope it suffices. If not, please give me a call and I will add additional information to satisfy any inquiry you might have.

Cordially,

L. Brooks Patterson
County Executive

Enclosures

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5187 (Substitute H-3 as passed by the House)
Sponsor: Representative Bradford Jacobsen
House Committee: Government Operations

CONTENT

The bill would amend Public Act 261 of 1966, which provides for the apportionment of county boards of commissioners, to do the following:

-- Reduce from 35 to 21 the maximum number of county commissioner districts in any county.
-- Limit to 21 the maximum number of county commissioners in any county with a population of more than 50,000.
-- Require a county that was not in compliance with the limit on commissioners to reapportion the county within 30 days after the bill's effective date.
-- Designate the county board of commissioners as the county apportionment commission in Oakland County.

Maximum Number of Commissioners & Reapportionment

Under the Act, within 60 days after the publication of the latest official U.S. decennial census, the county apportionment commission in each county must apportion the county into not less than five or more than 35 county commissioner districts of as nearly equal population as is practicable and within limitations laid out in Section 2 of the Act. Under the bill, the maximum number of county commissioner districts would be 21.

Section 2 of the Act specifies the maximum number of commissioners for counties, based on a county's population. Currently, a county with a population of 50,001 to 600,000 may have a maximum of 21 commissioners; a county with a population of 600,001 to 1.0 million may have 17 to 35 commissioners; and a county with a population of more than 1.0 million may have 25 to 35 commissioners. Under the bill, any county with a population of more than 50,000 could have not more than 21 commissioners.

If a county were not in compliance with Section 2 on the bill's effective date, the bill would require the county apportionment commission, within 30 days, to apportion the county in compliance with Section 2. For subsequent apportionments in such a county, the apportionment commission would have to comply with general apportionment requirements described above.

County Apportionment Commission

Under the Act, the county apportionment commission consists of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairperson of each of the two political parties receiving the greatest number of votes cast for Secretary of State in the last general election. If a county does not have a statutory chairperson of a political party, the two additional members must be party representatives from each of the two

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political parties, appointed by the chairperson of the State Central Committee for each of those parties. Three members of the apportionment committee constitute a quorum, and all action of the apportionment committee must be by majority vote.

Under the bill, in a county with a population of at least 1.0 million that has adopted an optional unified form of county government under Public Act 139 of 1973, with an elected county executive (i.e., Oakland County), the county apportionment commission would be the county board of commissioners. A majority of the members of the apportionment commission would constitute a quorum.

MCL 46.401-46.403

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would potentially reduce local unit expenditures by an unknown and likely minimal amount in counties with more than 21 county commission districts, by reducing the number of commissioners.

Date Completed: 12-14-11

Fiscal Analyst: David Zin